



Simi Bhutani  
77 Water Street, Suite 2100  
New York, New York 10005  
Simi.Bhutani@lewisbrisbois.com  
Direct: 646.783.1708

May 7, 2024

**VIA ECF**

Hon. Edgardo Ramos, U.S.D.J.  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, NY 10007

**Re: Neor, et ano. v. Acacia Network, Inc., et. al.  
No. 22-cv-04814 (ER)**

Dear Judge Ramos:

We represent Defendants in the above-referenced matter. We write to advise the Court of an additional issue that has arisen which we would like to address during the conference scheduled for May 8, 2024. As explained below, we ask the Court to bar certain opt-in plaintiffs from participating in this action and disregard their declarations that were submitted in support of Plaintiffs' Motion for Conditional Collective Certification ("Motion").

On April 3, 2024 (Dkt. 98), Defendants advised the Court of Plaintiffs' counsel CK Lee's last minute rescheduling of the named Plaintiffs' noticed depositions. Despite having previously rescheduled the depositions, on March 29, 2024, just 25 minutes before Plaintiff Tyron Wallace's deposition, Mr. Lee advised me that Plaintiff Wallace would not be appearing for his deposition and that the deposition was cancelled. The parties ultimately held Plaintiff Wallace's deposition on April 17, 2024, after it had been rescheduled three times at Plaintiff's request.

Mr. Lee agreed to produce the following four opt-in plaintiffs for their depositions: Angelina Lopez, Tearah Chestnut, Melysa Exolas, and Clarice Robinson. These individuals are important witnesses because they submitted declarations in support of Plaintiffs' Motion. The parties agreed to depose Angelina Lopez and Tearah Chestnut on May 6, 2024 and May 10, 2024, respectively. However, yet again, only 25 minutes before the commencement of Ms. Lopez's deposition yesterday, Mr. Lee advised me that Ms. Lopez would not appear for her deposition and that it needed to be cancelled. This is the second time that Mr. Lee's clients failed to appear for their depositions at the last minute with no reasonable excuse.

Additionally, despite Defendants' multiple follow-ups beginning in early April regarding the scheduling of depositions of the two other declarants, Melysa Exolas and Clarice Robinson, Mr. Lee

Hon. Edgardo Ramos, U.S.D.J.  
May 7, 2024  
Page 2

has failed to provide deposition dates. It has been over a month, yet counsel advises that they are still waiting on their availability.

It is clear that Plaintiffs are obstructing Defendants' ability to obtain all necessary discovery to adequately defend against the claims and oppose the Motion. This is extremely prejudicial since that opposition is currently due to be filed on May 15, 2024. Such gamesmanship should not be tolerated. As such, Defendants respectfully request that as an appropriate sanction, opt-in plaintiff Angelina Lopez be barred from this action, that the declaration she submitted in support of the Motion be disregarded, and that Defendants be awarded costs for her failure to appear for her deposition including the fees to prepare for the deposition and for the instant application. Defendants further request that opt-in plaintiffs Melysa Exolas and Clarice Robinson be barred from participating in this action and from recovering any relief, and that their declarations be retracted if Plaintiffs do not provide their availability by Friday, May 10, 2024.

We would welcome the opportunity to discuss these issues at tomorrow's conference. We thank the Court for its time and attention to this matter.

Respectfully,

*/s/ Simi Bhutani*

Simi Bhutani of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

cc: All counsel of record (via ECF)